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In Defense of Libertarian Political Action

by Jeffrey Rogers Hummel

Is electoral political action unlibertarian? A good number of libertarians have always thought so. Recently, moreover, with the formation of the Voluntaryists, a libertarian organization dedicated to exclusively non-political strategies, libertarian opposition to electoral politics has started to gain wider acceptance. Voluntaryists such as George Smith are building newer, more detailed, more sophisticated, and more powerful cases against libertarian participation in electoral politics. In light of these developments, it behooves libertarians who advocate electoral political action to give greater consideration to the anti-political critique and to defend their own position far more systematically than they have in the past.

This paper attempts to draft such a defense. It is, by no means, definitive. The question of the compatibility of libertarianism and electoral politics is, as we shall see, intimately related to many other difficult and unresolved libertarian problems, both theoretical and strategic. A definitive discussion must await the final resolution of those problems.

I should also stress, as an initial *Caveat*, that my defense of electoral political action is not intended to denigrate other kinds of activities designed to achieve a libertarian society. The two are not mutually exclusive. Indeed, libertarian political activity unsupported by purely educational efforts would be totally sterile, at best.

At the outset, any examination of whether electoral political action is unlibertarian must clarify the meaning of both terms: "electoral political action" and "unlibertarian." The expression, "electoral political action," subsumes a variety of activities. Some of these activities could be unlibertarian without logically implicating the others. For the purposes of this discussion, I

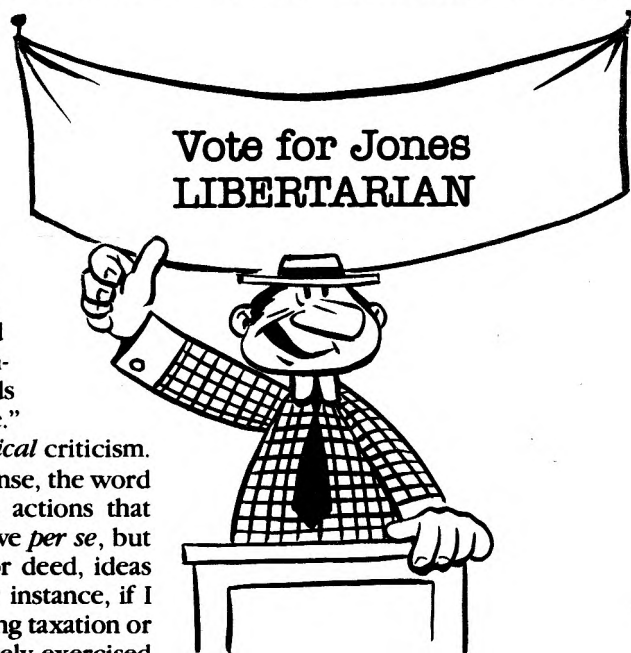
will divide electoral political action into three categories of activities: (1) holding elected office, (2) running for elected office, and (3) political voting.

The ambiguity of the term "unlibertarian" is less obvious but more crucial. In discussions of this issue, I have observed three separate usages of the term. In its first and narrowest sense, the word "unlibertarian" describes actions that actually violate rights or entail aggression. This is the sense in which theft, taxation, kidnapping, and the draft are unlibertarian. In this first sense, the word "unlibertarian" is synonymous with the words "aggressive" and "invasive."

This usage involves an *ethical* criticism.

In a second, broader sense, the word "unlibertarian" describes actions that are not necessarily invasive *per se*, but that promote, by word or deed, ideas that favor aggression. For instance, if I write an editorial endorsing taxation or bank robbery, I have merely exercised my right of free speech and have not committed aggression. Nonetheless, libertarians will justifiably criticize my editorial as unlibertarian, in the second sense. Similarly, if I contribute a large sum of money to an organization that favors a strong national defense and reinstatement of the draft, I have not violated anyone's rights, but I have done something unlibertarian, in the second sense. When libertarians, during their numerous and acrimonious movement controversies, condemn each other as unlibertarian, this is the sense in which they are using the term. In this second sense, the word "unlibertarian" means "ideologically inconsistent." This usage involves a *theoretical* criticism.

In the third, broadest sense, the word "unlibertarian" describes actions that may not be invasive and may not explicitly promote libertarian ideas, but that otherwise hinder the achievement of a libertarian society. What this third usage questions is not the action's ethical propriety, nor its theoretical consistency, but rather, its efficacy. Thus, in this third sense, the word "unlibertarian" means "strategically unsound" and involves a *strategic* criticism. Admittedly, the dividing line between unlibertarian in the second sense and unlibertarian in the third



sense can at times become a bit hazy, and I remain open to arguments that the two usages may ultimately collapse into one. For this discussion, however, I think the distinction is illuminating.

Combining the three categories of electoral political action with the three senses of the word "unlibertarian" yields a matrix of nine related but distinct claims about the incompatibility of political action and libertarianism. I shall use the term "voluntaryist" (with a small "v") to refer to libertarians who advance one or more of these claims, as distinguished from Voluntaryists (with a capital "V"), who have some kind of

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formal connection with the new organization. The most sweeping of the nine voluntarist claims is that political voting is unlibertarian in the first sense (i.e., invasive). Once this claim is proven, all of the rest appear logically to follow, if we also grant that actions which are invasive (unlibertarian in the first sense) are thereby ideologically inconsistent (unlibertarian in the second sense), and that actions which are ideologically inconsistent (unlibertarian in the second sense) are thereby strategically unsound (unlibertarian in the third sense). On the other hand, the most sweeping case for libertarian political action would consist of disproving the claim that holding political office is unlibertarian in the third sense (i.e., strategically unsound). If this voluntarist claim is refuted, all the remaining nine would also seem to be false.

In this paper, rather than focus on any single voluntarist claim, I plan to sequentially examine all nine. Needless to say, some will receive more attention than others. In some cases, my comments must remain only exploratory.

Unlibertarian in the First Sense: Invasive

Holding Elected Office: The question of whether holding elected office is *necessarily* invasive is actually a subset of a much broader question: does membership in the State, either as an elected official, as an appointed official, or as another kind of paid or unpaid employee, make an individual, *ipso facto*, guilty of aggression? Smith argues that, at least for anarchist libertarians, among which I count myself, membership in the State creates a presumption of guilt. This presumption follows from the anarchist contention that the State is inherently invasive.¹

(Actually, Smith in one respect understates his point. If membership in an invasive organization creates a presumption of guilt, then that presumption exists whenever the State is invasive, regardless of whether that condition is inherent or temporary. Thus, his point would hold equally for limited government libertarians, who agree that all existing States are invasive. The presumption of guilt for every member of the State only disappears *after* the State

has ceased to be invasive.)

What do anarchists mean, however, when they contend that the State is inherently invasive? They clearly do *not* mean that *every* single act of all States is invasive. Rather, they mean that all States must, by their nature, always commit *some* invasive acts. Elsewhere, I have drawn the distinction between Category I and Category II State activities. Category I activities are those which are invasive *per se*, like taxation and conscription, and which all libertarians would find equally objectionable if performed by private organizations instead of the State. Category II activities are those which are not invasive *per se*, like delivering the mail and providing education, but to which libertarians generally object when performed by the State because of their inevitable connection with Category I activities.² The anarchist insight about the State's inherent invasiveness does not even logically preclude the possibility that some existing State, like the United States government, might in the future cease all Category I activities and, thus, transform itself into a completely non-invasive institution. Anarchists merely believe that, if it did so, it would no longer be a State, in any meaningful sense of the word.

The distinction between Category I and Category II activities applies to individual members of the State as well as to the State as a whole. Members of the State can engage in both invasive and non-invasive activities. The difference, as far as anarchist libertarians is concerned, is that while the State must always commit some invasive (Category I) acts, individual members of the State need not. Some members could commit exclusively non-invasive (Category II) acts, some could commit exclusively invasive (Category I) acts, and some could commit a combination of both. Indeed, the anarchist contention about the inherent invasiveness of the State would remain fulfilled even if all members of the State engaged exclusively in non-invasive activities, save one, who committed some invasive acts. Consequently, accepting the contention that the State is inherently invasive creates no *logical* presumption of guilt on the part of all members of the State. It simply implies that some

members of the State are guilty of aggression.

Smith attempts to salvage the presumption of guilt with the doctrine of vicarious liability.³ He willingly concedes that not every clerk and other member of the State commits aggression directly. In fact, he points out that direct aggression is confined primarily to law enforcement and military personnel. Yet, most libertarians intuitively feel that the person who plans and organizes a bank robbery and the person who drives the getaway car are both guilty of aggression, even if they do not physically participate in the actual robbery.

In order to extend accountability for invasive acts to individuals who do not directly commit aggression, some concept of vicarious liability is essential. Like Smith, I am employing the term "vicarious liability" more broadly than its formal legal meaning to cover accomplice, accessory before and after the fact, aider and abettor, *respondeat superior*, and all the other more specific but similar legal concepts that arise either in civil or criminal law. Technically, there is no single legal term to cover all these cases, but vicarious liability, which comes from civil law, is the most general term available.

Although Smith interweaves his discussion of vicarious liability with his argument about the presumption of guilt, the two are actually independent. Even if valid, vicarious liability does not result in a presumption of guilt for membership in the State. In order for an individual to be guilty vicariously, he or she must still commit some act, even if not one that is directly aggressive. Vicarious liability, therefore, simply implies that some activities which were previously classified in Category II (non-invasive) might more properly belong in Category I (invasive). It is still logically possible for an individual to be a member of the State, an inherently invasive institution, and commit no acts that are invasive, either directly or vicariously. Only if we *define* membership in an invasive organization as an action which makes an individual vicariously liable, does guilt follow from membership. Nothing about the anarchist view

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—In The Movement—

David Bergland: The Correct Choice

by Bill Evers

(Author's Note: The preceeding issue of Libertarian Vanguard contained an article on the national convention written by Justin Raimondo and co-signed by Scott Olmsted. The quotation about Emil Franzi that was cited in the article was inaccurately attributed to me. It was actually authored by Colin Hunter. My role in the launching of the Bergland campaign was misstated. I was in fact working to put back together the Burns nomination effort at the time the Bergland campaign was launched. The quotations from Murray Rothbard cited by Mr. Raimondo were Mr. Rothbard's private first impressions of the 1981-83 LP National Committee, before he had a chance to work with the committee's members. As a member of Libertarian Vanguard's editorial board, I must apologize for the fact that these serious errors appeared in our publication. I can only offer as explanation the irregularities in the editorial process for the preceeding issue—irregularities for which Mr. Raimondo has been censured by the RC Central Committee.)

The basic reason that David Bergland was supported by Murray Rothbard, Dianne Pilcher, and me during the 1983 national convention was that Bergland is a proven, hard-core, mainstream, radical Libertarian candidate. The majority of RC members who were at the convention also supported Bergland and for the same reason.

The majority of the RC Central Committee chose, in contrast, to support Earl Ravenal. Their reasons have been ably stated by Mr. Raimondo in the preceeding issue of *Libertarian Vanguard*. I see no reason to rake over old coals and stir up animosities by going through a long procedure of

refuting Mr. Raimondo.

What I instead propose to do is to state the positive case for Bergland, because I believe David Bergland deserves the enthusiastic, whole-hearted support of radical Libertarians in 1984. That support should be given while still applying one's critical intelligence and endeavoring to ensure that the campaign always represents a hard-core libertarian position.

There are two basic reasons why Bergland was the right choice for the LP nomination: First he can and will do an excellent job explaining to the public what Libertarians stand for, what our fundamental beliefs are. Secondly, Bergland promises to devote his campaign to recruiting those who will join into a new constituency for liberty.

Bergland is the kind of candidate who is comfortable saying that taxation is "the politicians' way of stealing." Ravenal, for all his merits, is not that kind of candidate.

Having been the research director of the 1976 presidential campaign and the founding editor of a magazine that covered current events and policy issues, I do not wish to suggest that practical proposals are unimportant. In

fact, a campaign that neglects these matters will be irrelevant.

Nonetheless, the heart of radical libertarianism is its moral point of view. Murray Rothbard's letter to the convention delegates, which raised questions about how hard-core Ravenal's libertarian beliefs were, crystalized the worries of many delegates about how suited Ravenal was for presenting libertarian values to the American public as the LP's standardbearer.

Even on his home turf of foreign policy, Ravenal would have tended to stress the practical and strategic reasons not to be in Grenada. Bergland is the candidate who can comfortably call the Grenada invasion a crime. Furthermore, with Less Antman as his speechwriter, Bergland can be expected to persuasively combine facts and policy proposals with eloquent, hard-core libertarian principles that can be understood and appreciated by the public.

For these reasons, the press and the convention attendees correctly saw Bergland as the radical, ideological candidate and Ravenal as the pragmatic candidate. The majority of delegates preferred Bergland, and for the right reasons.

In addition, David Bergland's campaign staff had and has a very different strategic vision from that held by Ravenal's campaign team. The Earl Ravenal team was essentially the same as the 1980 Ed Clark for President management team that had been headed by

Ed Crane. It contains many able and conscientious people.

But one of the fundamental criticisms made of the Clark campaign was that it devoted too much of its resources to persuading liberals, *New York Times* readers and editorial writers, Anderson voters, the New Class, and preppies to simply *like* Clark and the LP. While this is important work, it is not the same thing as recruiting new voters and

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RCCC Members Censured

Meeting in December in San Francisco, the Central Committee of the LP Radical Caucus voted to censure *Vanguard* editor Justin Raimondo for printing *Vanguard* before its contents were reviewed at a meeting of the editorial board. Also censured were Colin Hunter, Eric Garris, Joe Fuhrig and Dianne Pilcher. As a result, a number of inaccuracies appeared in *Vanguard*. For the record: the majority (Murray Rothbard, Scott Olmsted, Colin Hunter, Dianne Pilcher, Bill Evers) of the RC Central Committee supported Gene Burns until he dropped out; Greg Kaza has not been elected to the RC Central Committee; and the Libertarian Student Network is not the youth section of the LPRC.

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of the State, however, creates a presumption in favor of this particular definition of vicarious liability over any other.

Before libertarians can apply the concept of vicarious liability at all, they must first establish the concept's validity by rigorously deriving it from more fundamental libertarian principles and, then precisely define the concept, so that those whom it implicates can be clearly distinguished from those whom it does not. Unfortunately, although most libertarians implicitly accept the concept, they have not even attempted to tackle these two prerequisites. So far as I know, only three previous articles within all of the libertarian literature have explicitly touched upon the concept of vicarious liability: Smith's "The Ethics of Voting"⁴, Murray Rothbard's "Law, Property Rights, and Air Pollution"⁵, and my own, "Can Elected Officials be Consistent Libertarians?"⁶ Of these three, the only one that comes close to deriving or defining the concept is Rothbard's, and he ends up rejecting vicarious liability, for the most part.

For the moment, I remain undecided on the ultimate validity of vicarious liability. A total rejection of vicarious liability leads to counter-intuitive conclusions. It would totally absolve Hitler and Stalin of complicity for the crimes that they ordered but did not personally commit. It would mean that the U.S. pilots who bombed Vietnam were guilty of murder, while President Lyndon Johnson, who ordered the bombing, was not.

On the other hand, this would not be the first time that libertarians have arrived at conclusions that are counter-intuitive. In some respects, the concept of vicarious liability appears to contribute to the State's mystique. Very often, the crimes of the State are treated as disembodied invasive acts totally divorced from any individual moral responsibility. One frequent excuse with which members of the State avoid personal moral responsibility is the claim to be "just following orders." This excuse is merely the most blatant manifestation of a general deference to hierarchical authority that the State cultivates, among its subjects as well as among its members. When libertarians

uncritically accept the popular intuition that a Hitler, or a Stalin, or a Johnson are equally or more responsible for the crimes of their States than the individuals who directly committed those crimes, they may be falling prey to the same deference to hierarchical authority that they so often criticize. Vicarious liability, rather than forcefully fastening moral responsibility upon State members as intended, may in fact dissipate and help erode individual responsibility for the State's crimes.

For the sake of argument, however, let us accept the ultimate validity of vicarious liability. Let us further pass over the absence of any general principle defining the acts that would entail vicarious liability, and instead consider four of the specific theories advanced to implicate members of the State, in general, and elected officials, in particular:

1. Possession of Unjust Power.

One voluntarist theory admits that elected officials may not *exercise* their power to commit or order aggression, but points out that they still *hold* such power. The power to aggress is integral to the political office, irrespective of the concrete actions of a particular office holder. The very act of holding unjust power, even if it is not exercised, makes elected officials vicariously liable.⁷

To evaluate this argument, we must closely examine what it means to hold power. Consider a tax collector. He or she holds the unjust power to collect taxes, that is, the power to steal. Despite initial appearances, the advantage conveyed by holding the power to steal is not a legal one. Any thief can draw up a legal code sanctioning his or her theft, but that would not necessarily give the thief any advantage over competitors. The advantage conveyed by holding power is ideological, in the broadest sense of the word. When the tax collector commits theft, most people think it is legitimate. That is the difference between holding power and not holding power. If someone holds the power to steal, all that means is that other individuals think it is morally permissible for the person holding power to steal.

To say that an elected official exercises unjust power is a statement about the actions of the elected official. To say that an elected official holds unjust

power, however, is not a statement about the actions of the elected official at all. Rather, it is a statement about other people's subjective opinions of the elected official. Since the possession of unjust power tells us nothing about actions of the elected official, and since libertarians hold individuals accountable only for their own actions, the possession of power cannot in principle be the basis for vicarious liability, no matter how broadly defined. To make elected officials vicariously liable for holding power, in essence, makes them liable for other people's opinions of them.

Consider the example of a small society of approximately one hundred individuals in which there is a hereditary position of chief. The chief has one power: to put any member of the society in stocks at whim. No one else has this power. If any other member of the society puts an individual in stocks, the majority of those in our small society will consider it illegitimate. They only consider it legitimate if done by the hereditary chief.

Now suppose someone is born to the position of hereditary chief who does not believe in putting people in stocks. Throughout his entire lifetime, he never once exercises this power. Nor, does he commit any other invasive act. In fact, he is so opposed to this power, that he tries to convince the other members of his society that no one should have such power. Nonetheless, the remainder of the society consists of hard-core traditionalists who not only continue to believe that a chief should have this power, but that he is still the hereditary chief, despite his protestations to the contrary and his refusal to exercise his power.

The chief in question, therefore, continues to hold the power to put people in stocks, although he never exercises it. Clearly, no libertarian could view this chief as guilty of aggression, either directly or vicariously. Yet, the argument that holding unjust power entails vicarious liability implies that this chief is guilty throughout his life. Since the chief cannot change the opinions of his fellows, he cannot avoid guilt.

In most modern societies, it is not

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—Issue Analysis—

The Pitfalls Of Contracting Out

by John Blundell

The evidence is overwhelming, say the proponents of "contracting-out." Whenever local government contracts out a particular service, costs fall dramatically and customer service rises in an equally striking manner. Contracting out, it is claimed, brings efficiency, cost effectiveness, and consumer sovereignty to an area of the economy where the opposites currently prevail.

Anything and everything can be, has been, or is currently contracted out by local government somewhere: refuse collection, parks maintenance, law enforcement, education, and the processing of tax receipts.

In some cases entrepreneurs have even paid local authorities for the privilege of taking over loss-making services which the entrepreneurs have subsequently turned into profit-making ventures.

Such moves to replace directly-employed labor with private contractors are viewed with hostility by the left, but, more importantly, with a complete lack of critical analysis by either conservatives or libertarians.

What is there to criticize about such marvelous improvements? In a nutshell: *the local authorities are not truly opening the provision of services to the market.*

Under outside contracting, local officials still decide for their electorate the level and quality of services to be provided, and select the company to provide the service. In other words, monopoly provision of service still exists, and all decisions about the service continue to be rooted firmly in the political processes of the local town halls.

When the word "privatization" is used to describe this system, this is even more misleading, since it implies that all decisions about a public function have been transferred to the private sector. In reality, only the mere delivery of the service—not its price, quantity, or quality—is subject to the disciplines of

the market.

The firm which wins a contract, say, to collect the garbage throughout the whole of a county will almost certainly *not* be operating at its optimal size. The scale of its operations has been arbitrarily set by local politicians, not by market signals.

The contractor might well be operating under massive diseconomies of scale. In reality, under market signals, the optimal situation might be to have half-a-dozen small refuse-collection firms serving one county, or one large firm serving a number of counties. As long as the scale of the operation is decided by bureaucrats, we will not know.

All we can surmise is that the odds are a million-to-one against the politicians having hit the optimum firm size at the time the contract is won.

Another criticism of contracting-out, which applies equally to provision of services by government employees, is that consumers must live with less than satisfactory service.

Under a monopoly franchise, the local government specifies a standard frequency of service. But the residents do not have identical needs for refuse removal, for example. Household A might need to have three garbage cans removed on Friday, household B might best be served by removing one can on Monday, and so on.

Only a market in which information of this nature can pass freely back to contractors, unfettered by political controls, will produce maximum consumer satisfaction. Yet the champions of contracting-out claim that it restores consumer sovereignty. How can an increase of consumer sovereignty be claimed for a situation in which bureaucrats fix the level and nature of the services to be provided? The consumer is not consulted.

The entrepreneurial talents of the private contractor licensed by a local authority are severely limited. The con-

tractor is bound by the terms of the contract he has won and, having no competition, may decide to work only to minimize his costs, rather than to maximize the services he supplies. Thus, we can expect that when a service is contracted out, much of the antiquated technology then in use will be replaced and other cost-minimizing improvements will be made. But the degree of improvement will not be as imaginative or extensive as would prevail if the contractor had to compete with many other entrepreneurial suppliers—which would be the case under free entry.

A further criticism of contracting-out is that it still leaves the decisionmaking in the hands of people vulnerable to lobbying by special-interest groups. Since the services in question are not paid for at the point of consumption, but from general taxes, the special-interest groups wanting more of a service know that they will not have to pay for increased services. And the politicians have little incentive to do other than meet such demands.

The current vogue for contracting-out obscures the existence of the *real* alternative to public provision by government employees, namely, the complete withdrawal of local authorities from many activities.

The contracting-out movement itself is creating a barrier to the existence of this real alternative. Just as the public-sector unions have railed against contracting-out, private contractors can be expected to oppose moves which would destroy the local monopolies they are successfully gaining now.

Free entry to the market is the key. Those parts of various acts which place a statutory duty on local authorities to provide certain services should be repealed so that public provision, either by private contractors or by government employees, can be replaced by private provision.

Contracting-out does improve services to some extent, and it does save some money. If it is viewed as the first step towards the complete withdrawal of local authorities from the areas involved, then it is to be welcomed.

But if contracting-out is viewed as an end in itself, it falls far short of being a market or free-enterprise solution. □

—Brickbats & Bouquets—

• One of the more obscure special interest groups that masquerades as libertarian is Hungarian exiles that seek to get the American taxpayer to foot the bill for an anticommunist invasion or revolution back in their native Hungary. Writing in the Feb. 1984 issue of *Reason*, Hungarian exile Tibor Machan departs from the libertarian mainstream to advocate "fighting" against isolationism.

He opposes taking a principled stance, saying this would be "rigid." He calls isolationism "irresponsible."

In particular, he opposes immediate withdrawal of U.S. forces from Japan and Western Europe. He questions the wisdom of disengaging from foreign entanglements. He opposes treating expansionism abroad as an evil. A big **Brickbat**, served up with Hungarian goulash, to Tibor Machan....

• A little ground-up Grenadan nutmeg should be sprinkled over the **Brickbats** awarded to Rep. Ron Paul and journalist Tom Bethell. In a recent issue of his *Freedom Report* newsletter, Paul lashes out at criticism of what he calls "the U.S. rescue of American citizens in Grenada." What is Ron Paul, who boasts of being a taxpayers' advocate, neutralist, and noninterventionist, doing advocating bailing out—at taxpayer expense—American medical students studying abroad and supporting the overthrow, by American military force, of foreign regimes?....

• Journalist Tom Bethell, who deserves a **Bouquet** for his Feb. *Reason* column on liberal threats to press freedom, must also receive a **Brickbat** for his attacks on the press for calling the U.S. invasion of Grenada an "invasion," instead of a "liberation" as Bethell would have it. Really, Tom, "invasion" is a straightforward, accurate descriptive term—"liberation" is propagandistic jargon....

• One of the more unusual "libertarian" attempts to fasten onto the great tit of statism comes from John Wickam. As reported in the Jan. *Voice of Liberty*, newsletter of the San Joaquin County (California) LP, Wickam (who is the editor of that newsletter) maintains that infants have an enforceable legal right to their mothers' breastmilk. In contrast, the libertarian position is that women

own their own bodies, including their breastmilk. And we are aiming our **Brickbat** right at Mr. Wickam's chest. But undoubtedly we will hear more in the future about Mr. Wickam's avant-garde "pro-life" libertarianism. One thing we feel it incumbent on Mr. Wickam to inform us about more fully is precisely how he would like to enforce this alleged right....

• A **Bouquet** to new RC Central Committee member Joe Fuhrig for flying at his own expense to the LP National Convention at the last minute to run for the Vice Presidential nomination. Fuhrig lost, but was able to raise radical libertarian issues in the course of a hard-hitting campaign....

• The LP's 1972 Presidential nominee, John Hospers, has become a renegade and a Reaganite. The Oct. 21, 1983 issue of the *Daily Trojan*, the student newspaper at USC, reports that Hospers has given up involvement in the LP and hopes that Reagan is re-elected. Considering that Reagan has devised and implemented the largest tax hike in American history, this is a strange stance for a former LP standardbearer to take. Hospers should have **Brickbats** rained down on him while the band plays the USC Fight Song.

Nor does Hospers hesitate to misrepresent the LP's official position on disarmament. For a philosopher, Hospers is remarkably equivocal about just what the LP's position is. He implies that the LP has endorsed unilateral disarmament. For conduct unbecoming a philosopher, Hospers gets another **Brickbat**....

• A baby **Brickbat** to quasi-libertarian syndicated columnist Stephen Chapman, who devoted a June 1983 column to deploring the U.S. Supreme Court's elimination of restrictions on abortion. Chapman tries to point to liberal hypocrisy in the court's support for some regulations but not others. But he falls flat on his face; he is simply wrong in stating that the court finds that a "compelling state interest" justifies truth-in-lending laws. In truth, since the 1930s, the Supreme Court has accepted virtually all economic regulations without checking into their justification.

Not only is Chapman wrong about the legal doctrine at issue, but he also fails

to inform the reader that he himself opposes gun controls and truth-in-lending laws. In his haste to twit the Supreme Court for inconsistency, Chapman compounds his error by leaving the reader with the impression that all regulations are desirable....

• A **Brickbat** to the Libertarian International and the British Libertarian Alliance International for including George Miller of the Russian fascist organization NTS in the program of the upcoming Libertarian International meeting....

• Oh Liberty, what crimes are committed in thy name! A new London-based antismisinformation journal, *Internal Security Defence Review*, advocates in its inaugural March 1983 issue that imperialist governments attempt to brainwash captured guerrillas by indoctrinating them in the thoughts of Mises, Hayek, and Nozick. In our judgment, Hayek and Nozick don't address the problems of the anti-imperialist guerrilla very directly. But Mises's *Nation, State, and Economy*—newly available in a **Bouquet**-worthy translation by Leland Yeager—is a bible of libertarian anti-imperialism and would surely confirm the guerrillas in their fundamental stance....

• Laura Belcher, whose regular column in *LiberCal* (published under the auspices of the Los Angeles County LP), has been 100% wrong, has come up with another humdinger. According to Ms. Belcher, the goal of Libertarians should be a homogenized rather than pluralistic American culture. Minorities should be forced into the American mainstream. Spanish-speaking taxpayers should be told what to do in English that they do not understand.

The specific target of Ms. Belcher's current (Sept. 1983) anguish is election materials in non-English languages. But the real problem here, unnoticed by Ms. Belcher, is tax-funded election materials. Neither English-speaking voters nor non-English speaking ones should enjoy this subsidy. This is the first time (but probably not the last) that we've heard from a supposed Libertarian that one of the proper roles of law enforcement in a free society is imposing an official language on those who do not speak it. We hereby award Ms.

Belcher a **Brickbat**, and we're only sorry that we're doing it in English....

- The Korean airliner incident led to the usual knee-jerk responses in those libertarian circles where Reagan is considered a squishy-soft, Comsymp, sell-out dove. *Reason* magazine rejected the submitted column on the incident by its regular columnist Murray Rothbard. Rothbard raised reasonable questions about the incident, but then editor Bob Poole refused to countenance dissent on this topic from *Reason's* militaristic line. A **Brickbat** to Poole and *Reason* and a **Bouquet** to Rothbard for resigning as a regular *Reason* columnist after this and a previous column were refused publication....

- The acme of irrational hysteria over the Korean airliner was reached in a full-page ad in the Sunday, Sept. 11, 1983 *New York Times*, sponsored by the *Intellectual Activist* newsletter and signed by a herd of Randian scholars and groupies.

The ad called for the complete severing of diplomatic relations with the Soviet Union and the terminations of all negotiations as well. These self-proclaimed paragons of Randian reason proclaim—rather unrealistically—that the Soviet government is literally not to be found in the same “universe” as the freedom-loving U.S. government. A **Brickbat** for this evasion of reality.

The ad correctly likens the Soviet government to bank robbers and other criminals. But somehow the Randians (who, after all, are intellectually aware that taxation is theft) neglect the fact that the American government is also a group of robbers and other criminals. Check your premises, Randians.

We radical libertarians favor U.S. government diplomacy with all de facto governments, including Nazi Germany, Khmer Rouge Cambodia, the USSR, Red China, and Iran, even if those governments commit grave war crimes or engage in the mass murder of civilians. Such is our well-considered, prudent moderation.

But the Randians favor cutting off all ties with governments that shoot down civilian passenger airliners. Okay. What about Israel? Israel deliberately shot down a civilian airliner in 1973. Yet

when it comes to holding the Israeli government to universal moral standards, what happens to the Randians: Blankout....

- A **Bouquet** to David Ramsay Steele, a well-known libertarian critic of communism, for his article on the Korean airliner incident, entitled “007—Licensed to Trespass?”

Steele does a careful job of outlining in his short, leaflet-length article some of the factual questions that need to be answered about the incident. He does not hesitate to call the Soviet government's act murder. But he also raises important questions about how clean the hands of the American government were in the whole matter. He likens American politicians' rhetorical use of the incident to an earlier generation's rhetoric about the *Lusitania*. Steele's article is available from the Libertarian Alliance, 9 Poland St., London W1, Great Britain....

- A **Brickbat** to self-styled pragmatist LPer John Wood. He won a seat in the Anchorage assembly by attacking the incumbent for granting zoning variances. The Libertarian position is that zoning is an oppressive evil. The more exemptions and variances that are granted the better. Best of all, naturally, is abolition of zoning....

- **Bouquets** to four consistently excellent newsletters: *Hawaii Libertarian*, \$3/yr. from Libertarian Party of Hawaii, 1125 St. King St., Rm. 202, Honolulu, HI 96814; *Reason and Liberty*, \$3.90/yr. from Libertarian Party of Washington State, P.O. Box 8071, Tacoma, WA 98408; *Idaho Liberty*, P.O. Box 205, Boise, ID 83701; and *Competition*, Council for a Competitive Economy, 410 First St., S.E., Washington, D.C. 20003.

The Nov.-Dec. 1983 issue of *Competition* is particularly recommended for its fascinating profile, “Sewell Avery: A Defiant Capitalist,” by editor Cynthia Jo Ingham....

- The libertarian journalists' group, the Free Press Association, deserves a **Bouquet** for awarding its annual Mencken award for best magazine article to Philadelphia investigative journalist Murray Waas for his piece, “The Rise and Fall of a Ward Hack.” *Inquiry* magazine editor

Glen Garvin was fired by de facto publisher Ed Crane for having run Waas's article. But whoever said Crane knew anything about journalism....

- It is somewhat difficult to know where to begin in awarding this **Brickbat** to David Morris of the South Carolina LP. Morris has written a leaflet entitled “The Threat of Nuclear War: A Libertarian Response.” His policy recommendations are sound: no foreign aid, no alliances, no troops abroad, abolish the income tax, and abolish the Fed. But the real point of his article is the evils of East-West trade.

For quotations to bolster his argument, Morris relies on Werner Keller, author of *The Bible as History* and a falsified statement Morris attributes to Brezhnev.

The truth of the matter is that trade with America is not what keeps the Soviet economy afloat nor is it the *sine qua non* for Soviet military might. The sooner our libertarian Birchers figure this out, the sooner they will be able to talk intelligently about foreign policy. For those interested in this topic we recommend Benjamin Rogge's article on East-West trade available from the Cato Institute....

- A **Brickbat** to the Montana LP for eliminating the requirement that new members sign an endorsement of the nonaggression axiom in order to join. Hey, Montanans, we've an ideological party, not a garden club.

This new Montana LP policy is part of an anti-organization trend in that party. Instead of a functional balance between centralization and decentralization, the Montana LP has gone hog wild for decentralism. According to the state LP newsletter, removal of the requirement of basic ideological agreement for new members is “freeing up the party.” Next we will learn that welcoming fascists and communists into the LP is liberation and tolerance.

New state chair Bob Crane wants the LP to be merely an umbrella designation that identifies independently operating “freedom guerrillas.” Crane is also under the illusion that the American Revolutionary War was fought without organization. Reading some history

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only elected officials and other members of the State who hold unjust power. The State grants unjust powers to many private individuals. Corporations have the unjust power to limit their liability against injured third parties, which they rarely exercise. Married individuals acquire unjust power over the property of their spouses, a power much more frequently exercised. We all have the unjust power under specified circumstances to cheat our creditors by declaring bankruptcy. I could extend this list for pages. The theory that holding unjust power entails vicarious liability would implicate the parties in all these cases, regardless of whether particular individuals ever exercised their powers. These are some of the perverse conclusions to which such a criterion for vicarious liability leads.

2. Functional Responsibility. A second voluntarist theory attempts to establish vicarious liability on the basis of an institutional analysis of the State. This theory shares some similarities with the possession of power theory, but is not identical. According to this theory, every member of the State performs a function consistent with the State's purposes. Thus, State members necessarily perpetuate the State's existence and further its aggression, regardless of their personal opinions or intentions. For instance, a clerk in an IRS office may not directly commit aggression, and he or she may believe that taxation is unjust, but he or she still performs a vital function that facilitates continued taxation. We can subject every State member to this kind of institutional analysis, identifying what role they play in the State's aggression. Their functional contribution makes all State members, to some degree, vicariously liable.⁸

We will examine later whether an institutional analysis does, in fact, impute some kind of functional responsibility for the State's crimes to all its members. An even more basic problem, however, is this theory's attempt to derive normative liability from descriptive function. One of the primary objectives of a theory of liability, vicarious or not, is to determine against whom it is moral to employ defensive and retaliatory force. If an individual is liable, then

he or she becomes a legitimate object of just defense and retaliation. If an individual is not liable, then it is not appropriate to employ force against him or her, even if he or she contributed through a complicated causal chain to some act of aggression.

Those who are liable for an invasive act must be a carefully circumscribed subset of those who are in some more general sense responsible. A vague or broad theory of vicarious liability would undermine the critical libertarian distinction between invasive and non-invasive acts. If everyone is to some extent guilty of aggression, then a consistent ethical opposition to aggression loses much of its import. Everyone becomes a legitimate object of retaliation, and the dividing line between legitimate and illegitimate coercion becomes hopelessly confused. A libertarian theory of vicarious liability must be precise and strictly limited.

If everyone is to some extent guilty of aggression then a consistent ethical opposition to aggression loses much of its import.

Functional responsibility is too broad and vague. It could easily encompass many who are not members of the State. Indeed, voluntarists like Samuel Edward Konkin III have already employed institutional analysis to extend vicarious liability from the State to *all* members of *all* legal political parties, including the Libertarian Party.⁹ If we apply institutional analysis to the State, then we must also apply it to the rest of society. Because the State is not an exogenous institution, imposed from outer space, but rather a product of the culture that legitimizes it, such an expanded institutional analysis would describe many sources of State power outside of the State itself. Although distinct entities, society and State are also intimately intertwined in a variety of

intended and unintended relationships that benefit the State.

Professors and teachers in private universities, colleges, and schools, for instance, are just as assiduous in spreading statist thought as professors and teachers in State institutions and thus, according to an institutional analysis, equally responsible. And what of the contribution of the Fourth Estate, the news media, to State legitimization? Cooperative taxpayers make it functionally possible for taxation to continue. Indeed, to the extent that libertarians come to terms with the State in order to pursue their subjective goals other than liberty, they also contribute to the perpetuation of the State. Many of us use State courts to enforce contracts, and nearly all of us use State roads and the State postal service. We are inexorably caught up in institutional relationships with the State that we cannot avoid, unless we completely isolate ourselves from society. Very few of us can disclaim any responsibility whatsoever, if we define responsibility broadly enough. We could all do more to oppose the State. This should hardly be used as a criterion to convict us of aggression.

3. Receipt of State Money: Many voluntarists claim that accepting a salary financed from stolen tax money makes State members vicariously liable. State members, however, are not the only individuals who receive the State's largess, whether in the form of money or other goods and services. Are welfare recipients also liable because they accept stolen money? Clearly, at least some uses of State resources, such as driving on public roads and mailing letters at the post office, are exempt from vicarious liability. Not everyone who receives stolen money from a bank robber becomes culpable, not even everyone who knows that it is stolen money. Both the taxi driver who unknowingly transports the robber from the scene of the crime, and the grocer who sells the robber food, knowing he is a thief, are presumably still innocent of the bank robbery. Accepting money or other resources from the State may be one *necessary* condition for vicarious liability; it is not a *sufficient* condition.¹⁰

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Letters

Dear Editor:

The December *Vanguard* was interesting—and far more effective without the vicious sniping, the hysteria, and the half-truths and lies that have been so prominent in previous issues. I read and enjoyed the Grenada and KAL 007 pieces and found your treatment of the '83 convention to be not merely a thousand notches above MNR's hateful piece in *LF*, but good in its own right.

Tom G. Palmer
Washington, D.C.

Dear Editor:

I was somewhat surprised to read, in the December *Vanguard*, that I allegedly "criticized the Clark campaign on foreign policy and 'defense' matters from the right."

In my one and only published critique of the Clark for President campaign, I made the following statement:

"On the subject of foreign policy, Clark was at his best: resolutely non-interventionist, willing to take the pure position even on the tough one, Israel. No quarrels here.

"On defense, he waffled, trying to cut it both ways. After receiving some heat from pro-defense forces within the party, he adopted pro-defense rhetoric in his speeches. But the White Paper on Foreign Policy and Defense came out against every single proposed new defense system, and offered no alternatives. *Still, given the disagreements within the party on this issue, he can't really be seriously faulted for his performance here, either.*" (emphasis added)

Is that "criticism from the right?" I think not. And I question your motives for making the assertion...especially as you eliminated the second paragraph quoted above when you reprinted my critique in *Vanguard* in 1981.

Like it or not, I am generally considered to be a "mainstream" libertarian. My views fall somewhere between those of Bob Poole and Murray Rothbard, neither of whom represents an extreme polar position. If you're worried about right-wing opportunism, go after your convention buddy Dick Randolph! And rest assured that Frank, Murray and I aren't about to approve any campaign materials calling for an inter-

ventionist foreign policy!

David F. Nolan
Denver, Colorado

Dear Editor:

I just finished the December 1983 issue of *Libertarian Vanguard*, which arrived last week. Unlike most of the previous issues which I have perused, this one was surprisingly good.

The piece on Grenada was excellent, and your article about the Korean Airlines provocation contained some info I don't recall having seen before. Although I disapproved of your attacks on the "Crane Machine" (as usual), and I certainly have no intention of backing Bergland or anything, the LP convention story had some interesting insights. I all but cheered when I completed your attack on the so-called "Libertarian International."

My only major question was about the piece on Pastora. It is my understanding that he has sought CIA assistance for his crusade against the Sandinista regime. Even if he hasn't received such assistance, that leaves me less than enthusiastic about contributing to his cause.

E. Scott Royce
Arlington, Virginia

Dear Editor:

I'd like to congratulate you on the new *Libertarian Vanguard* (Dec. 1983). What a change over the previous anti-Crane scandal sheet. It had gotten to the point that I was considering resigning the LPRC out of embarrassment.

It is sad the price the Central Committee had to pay to reach its present position. I will miss Murray Rothbard. But I've often wondered about him. Years ago he ran from the Buckley Right, but now he wants a coalition with the LP populist right?! Of course, I could see this coming, with the 1981 weird Coalition for a Party of Principle. I will also miss Scott Olmsted. I only met him once, but was very impressed.

The same day I received the Dec. *LV*, I received the latest *American Defense*. What is wrong with those people? Other than the revealing incoherent interview with Bergland, the rest was trash. How much influence does the LDC have relative to the LPRC? Not

much I hope, but I fear the LP and its right-wing populists are gradually taking over.

Over the last couple of years I have engaged in debate with Mike Dunn; first in *Frontlines*, then *American Defense*, and finally in private correspondence. Dunn is a complete pragmatist; he has no discernable philosophy unless it is militarism and nationalism. He and LDC worry me a great deal, and I'd like to become more active in the LPRC to combat their ideas.

Paul Bilzi
Hopkinton, New Hampshire

(The following letter was originally sent to the Libertarian Forum. We print it here for the information of our readers.)

Dear Editor:

The last thing I wish to do is plunge into the morass of distortion that constitutes the *LibForum's* September-October report on the 1983 Libertarian Party presidential nominating convention. Setting the record straight in its entirety would require at least as much space as the original article, and probably more. But one thing must not go unanswered, namely, the attack on the integrity of the four Radical Caucus Central Committee members who supported Earl Ravenal for the nomination.

The article charges that Messrs. Raimondo, Garris, Olmsted, and Hunter demanded and were promised campaign jobs or influence in return for their switch from David Bergland to Mr. Ravenal. This is an outright falsehood, and the *LibForum* reporter could easily have known this. I can report the facts because I was an eyewitness. While the four were searching their consciences over this issue, they asked for a private meeting with Mr. Ravenal. I also attended the meeting. They asked Mr. Ravenal some questions on his positions, then they made their "demands," which, from the Ravenal campaign's point of view, couldn't have been less demanding.

First, they asked that foreign policy be a central issue of the campaign. Second, they asked for a minority outreach program; specifically, they wanted a Spanish brochure on Central America. Third,

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Brickbats & Bouquets

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might be the cure for what ails Montana....

• A **Bouquet** for Hoover Institution fellow Annelise Anderson for her outstanding *New York Times* Op-Ed piece on recent immigration proposals. Anderson attacks the proposed bills for their penalties on employers, the incentives they create for racial discrimination, the numbers they would add to the welfare rolls, and identity cards that would surely be used for enforcement. Her article is a model of libertarian pol-

Bergland

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new activists, committed to the Libertarian Party. Nor is it the same thing as building up the LP's organizational strength. An Anderson voter might well like Clark but still vote for Anderson.

The strategic vision of the Ravenal team (called the Crane machine by its foes) was to rely on Professor Ravenal's prestige with precisely the same groups they had tried to cultivate in 1980. The Bergland campaign team, in contrast, was promoting a candidate who (as an experienced national and California candidate and as a one-time USC Law Review editor) could talk comfortably to the news media and the Eastern seaboard elite. But Bergland could also talk comfortably and sympathetically with tax rebels, gold bugs, sagebrush rebels, home schoolers, anti war and anti draft activists, and so forth. The issue of Ravenal's Council on Foreign Relations membership symbolized this weakness of his candidacy for convention delegates.

The convention delegates liked Bergland's promise to run "a hard-core, radical, persuasive campaign." They liked his plan to build up the LP's organizational strength, its membership, its long-term electoral strength, its local candidates, and the constituency for the libertarian cause. They liked his willingness to recruit into that constituency people from all across America who are ripe for joining in our glorious endeavor. In short, the delegates did the right thing and picked the best candidate. Now it is up to all Libertarians, regardless of whom they supported in New York, to work together to make this a top-notch Presidential campaign. □

icy analysis....

• A **Double-Brickbat** of Presidential proportions to David Bergland for his remarks in the November 1983 issue of the *Washington Libertarian*. In an interview on defense matters, the LP national standard-bearer was asked: "Let's say that a country that's friendly to us, Japan for instance, were attacked by, let's say the Soviet Union, and the government of Japan asked for direct military assistance, what would be your response?" "In responding to that," Bergland said, "I'd have to make some assumptions. If that happens today, the U.S. government has treaty obligations. So if someone were to call up the President of the United States today and say 'The Russians are attacking Japan, are you going to do what you said you were going to do?' We would probably go ahead and do it." One can only wonder what Bergland means by "go ahead and do it." Does he mean go ahead and start World War III? This is far worse than anything good old Ed Clark ever said. For if President Bergland is committed to carrying out our so-called "treaty obligations" this means he'll have to stand by everything from NATO to alliances with Central American oligarchs....

• Yet another **Brickbat** of considerable size and weight to Bergland for endorsing the militarization of space in the same interview. "In terms of a non-interventionist foreign policy and military defense," asks the *Washington Libertarian*, "do you see any role for weapons in space?" "There are already weapons in space," answers Bergland. Oh, I get it—just like we already have all those treaty obligations. He then goes on to say what kind of space-based military technology he'd "feel comfortable with." "I don't mean offensive weapons," he hastens to add, as if the development of particle-beam weaponry in space were anything other than preparations for a first-strike against the Soviets. How he plans to differentiate his own space-gun scheme from Reagan's Star Wars "High Frontier" program remains a mystery. But we're given a hint when he says: "I think further that I would like to see the Federal Government express an interest in the development of that kind of technol-

ogy, and let the private sector go to work on it..." Can't you just see it? Here we have a political innovation of major import—Tax Credits for Militarists! Hell, why should the government have a monopoly on weapons of mass destruction while all those poor, over-taxed, over-regulated weapons contractors like Lockheed, Boeing, General Electric and General Dynamics are left out in the cold? As for precisely how Tax Credits for Militarists would work, well, details are sketchy—but we've got plenty of time. It's going to be a *long*, bumpy campaign....

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they asked that someone they trust be high up in the campaign structure. They supplied two names: mine and Tom Palmer. And fourth, they asked that others they trust have at least an advisory function in the campaign. Again, they supplied two names: Jeff Hummel and Bill Evers. All of these "demands" were agreed to. I can personally assure your readers that these promises would not have been repudiated.

Let me emphasize that at no time did the four ask for jobs of any kind or even for volunteer positions for themselves. Neither were they offered jobs. It is true that Mr. Olmsted was asked to serve on a central campaign committee. He is a talented, respected member of the party, who would serve any committee with distinction. But as to the suggestion that Mr. Olmsted endorsed Mr. Ravenal in order to get this position: What a laugh! We practically had to twist Mr. Olmsted's arm to get him to accept the appointment.

Your reporter may feel that the four RCCC members did something dastardly by switching from Mr. Bergland to Mr. Ravenal at the convention. Let's leave it to your readers to decide if changing one's candidate as new information becomes available is a terrible act of disloyalty, a sellout, or merely a rational act in a world of imperfect knowledge. But one surely ought to be able to debate the question without false allegations that unjustly besmirch the integrity of one's associates.

Sheldon L. Richman
Springfield, Virginia

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4. Taking Oaths of Office: Voluntaryists look suspiciously upon taking an oath of office, although none have argued explicitly that doing so, in and of itself, makes an individual vicariously liable for the State's aggression. The oath actually figures more prominently in other voluntaryist claims, but I have introduced it here for the sake of comprehensiveness. The oath of office is a statement of intent. If it is to be interpreted as a source of liability, it could only be as a result of the invasive nature of the intended actions. But the intended actions described in the oath are no more specific than the various criteria for liability we have already considered. Therefore, if none of the previous theories provide a solid basis for vicarious liability, then neither can taking the oath of office.

Conclusion: Without a more complete derivation and definition of the concept of vicarious liability, voluntaryists cannot plausibly sustain the claim that all members of the State or all elected officials are necessarily guilty of aggression. The invasive nature of the State necessitates that at least some proportion are probably guilty. Any concept of vicarious liability increases that proportion further. The voluntaryists, however, have failed to demonstrate that an innocent elected official is, in principle, completely impossible.

Running for Elected Office: I have already mentioned that Konkin extends vicarious liability from the State to all members of all legal political parties. Actually, if voluntaryists cannot demonstrate that holding elected office is invasive in all cases, then they cannot show that running for such offices is invasive in all cases. Nor can they argue that the two acts in tandem—running for and then holding office—are neces-

sarily invasive, if independently they are not.

Return to our small hypothetical society of approximately one hundred individuals. Making the chief an elected rather than a hereditary position would not materially alter the example. Whether the chief holds office as a result of the accident of birth or as a result of events over which he has some control is irrelevant. An individual could run for chief, win, and then never once exercise his arbitrary power to put people in stocks. In that case, neither his running for office, nor his holding office, nor the two in combination would make him guilty of aggression, either directly or vicariously.

Running for office is not invasive when the candidate commits no invasive acts once in office, nor when the candidate loses. In fact, I would go further. Because there is no necessary relationship between the content of a candidate's campaign and the actions a candidate takes in office, if holding office is not *always* invasive, then running for elected office is *never* invasive. In other words, even if an elected official does commit invasive acts while in office, these cannot be imputed back through time to taint, vicariously, his running for office.

Political Voting: There are three forms of political voting which must be examined separately: (1) candidate voting, in which the voters choose an elected official; (2) referendum voting, in which the voters directly choose State policy; and (3) constitutive voting, in which the voters, by adopting or modifying a constitution, directly establish a State or modify its form.

1. **Candidate Voting:** For candidate voting to be invasive at all requires a concept of vicarious liability that implicates the voter in the invasive

acts of an elected official. Therefore, candidate voting can only possibly be invasive when the voter votes for a candidate who both (a) wins and (b) commits invasive acts. If the candidate loses, or if the candidate wins but commits no invasive acts while in office, the voter is totally blameless.

Even in those cases where the candidate wins and then commits invasive acts, however, I do not believe the voter is vicariously liable. Assume in our small hypothetical society that two candidates are running for the position of chief: a conservative who promises to exercise the power to put people in stocks very liberally, and a liberal who promises to exercise that power with restraint. Are those who vote for the liberal candidate in order to minimize the number of individuals put in stocks vicariously liable for the few times that the liberal candidate commits aggression, if elected?

Some voluntaryists claim that such voters are liable, because even though they voted for the lesser of two evils, their action affected the liberty of others. They put in power a chief who then committed some invasive acts. This argument, however, proves too much. The ability to affect the liberty of others is an inevitable consequence of a system of political voting. Potential voters do not escape this predicament by abstaining. Not voting determines any election's outcome just as much as voting for one side or the other. If affecting the liberty of others is a valid basis for ascribing liability, then those who failed to vote are also liable. Making voters vicariously liable for the outcome of an election in which every option, including not voting, results in some aggression is far from just.

I do not think voting is invasive even for those who elect a candidate who is the greater of two (or more) evils. As I pointed out above, there is no necessary relationship between the content of a candidate's campaign and the actions a candidate takes once in office. Voting, moreover, is just one of many ways of affecting State policy, and not always the most effective. Often, contributing to a campaign, lobbying, or some other political activity offers greater certainty of

TO COME IN FUTURE ISSUES

—Murray Rothbard's suppressed *Reason* columns on Gordon Kahl and KAL Flight 007

—Jeff Hummel and David Gordon on the new Reason Foundation book, *Defending A Free Society*

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influencing the actions of the State. As a result, the causal connection between an elected official's invasive acts and the voter who elected him is much too tenuous and ephemeral. It provides no more than a metaphorical basis for vicarious liability.

2. Referendum Voting: Unlike candidate voting, the connection between State policy and referendum voting is unambiguous and direct. In a bank robbery, if one robber holds the gun while another issues the threat, both have directly committed aggression. A law is nothing less than a threat. Thus, when a legislature passes an unjust law, every legislator who voted for the law is guilty of aggression, not vicariously but *directly*. Similarly, voting for an unjust law in a referendum election, if the law passes, is invasive. No concept of vicarious liability is required to hold such voters liable. They are as guilty of direct aggression as the bank robber who issues a threat that his colleague will enforce. On the other hand, voting against an unjust law in a referendum election and voting for an unjust law that does not pass are not invasive acts.

3. Constitutive Voting: In an article criticizing voluntaryism, Murray Rothbard and Scott Olmsted have conceded that voting to establish a State or to increase its power in a constitutive election is invasive.¹¹ I am not so willing to make the same concession. Unlike referendum voting, constitutive voting does not directly determine State policy, but rather determines the institutional form and power limits of the State. The State may gain the power to collect taxes in a constitutive election, but that does not guarantee that the State will exercise that power. Consequently, while voters in referendum election are directly liable, voters in a constitutive election are at worst only vicariously liable. I believe that voluntaryists can construct a plausible case for the vicarious liability of voters in constitutive elections, but the case will not be conclusive until a libertarian theory of vicarious liability is ultimately validated and defined. Until then, the invasive nature of constitutive voting remains an open question. In any event, those who vote against establishing a State or against increasing its power, as

well as those who vote for establishments or increases that fail, are innocent.

Unlibertarian in the 2nd Sense: Ideologically Inconsistent

Holding Elected Office: When the voluntaryist shifts from arguing that holding office is invasive to arguing that it is ideologically inconsistent, the possession of power and functional responsibility theories become much more powerful, although still not conclusive.

The possession of power theory observes a theoretical inconsistency in simultaneously holding unjust power and claiming to oppose such power on principle. In concrete form, it finds an anarchist-libertarian Senator to be a contradiction in terms. This argument, however, breaks down over the same distinction that shattered the attempt to show that the possession of power is necessarily invasive: the distinction between holding and exercising power. The unjust power that an elected official exercises is the result of his or her own actions. The unjust power that an elected official holds, in contrast, is the result of the ideas that legitimize the office. It is no more inconsistent to work against such ideas from inside the office than from outside. An anarchist Senator, like an atheist clergyman, is an anomaly, not a contradiction. Just as an atheist may advocate from the pulpit ideas that would eliminate the position of clergyman, so an anarchist may advocate from political office ideas that would eliminate the position of Senator. As long as the anarchist Senator never exercises unjust power, and makes clear his or her fundamental opposition to the ideas that make the office of Senator possible, there is no ideological inconsistency.

At this point, the voluntaryist will interject the functional responsibility theory. A Senator may advocate any ideas he or she pleases, but institutional analysis of the State establishes that even an anarchist Senator, if he or she fulfills the demands of the office, performs an objective function that contributes to the State's aggression. In order to evaluate whether institutional analysis does, in fact, impute functional responsibility to all members of the State or to all elected officials, we must distinguish

between two types of functions within the State apparatus. Some functions involve *setting* policy, while others involve *implementing* policy. Many specific State jobs, of course, contain elements of both, but most jobs are predominantly one or the other.

The voluntaryist charge of ideological inconsistency probably does apply to all State jobs that implement policy, although even this concession must be qualified. The State is inherently invasive, but the fact that it is also legitimized imposes severe constraints on its actions. These constraints not only limit the State's invasiveness, but they also prevent it from being purely invasive. In order to maintain legitimization, the State must attempt to provide many goods and services, such as delivering the mail or dispensing old-age insurance, that have no intrinsic relationship with its aggressive goals. Any contribution to the State's aggression is an incidental feature of the jobs that provide these Category II goods and services. To the extent that they help legitimize the State, individuals working at these jobs do indeed perpetuate State aggression, regardless of their intention, but this is far from their primary function.

While the charge of ideological inconsistency does apply, no matter how marginally, to all State jobs that implement policy, it does not necessarily apply to jobs that exclusively set policy. Policy setting positions are an inevitable component of all designed human organizations. Individuals serving in those positions can, by the very nature of the position, alter the fundamental goals and characteristics of the organization. Smith has made the analogy between a company that manufactures automobiles and the State, so let us draw out the full implications of this analogy.¹² Most specialized jobs within the automobile company, such as machinist, welder, fitter, and warehouse foreman, are policy implementing. They functionally contribute to the manufacture of automobiles, regardless of the individual workers' personal intentions or preferences. The automobile company also has, however, a board of directors or some other policy setting

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body that can, if its members so desire, change the product manufactured, from automobiles to toasters, or convert the organization into a non-profit corporation that manufactures nothing at all. Even if the company continues to manufacture automobiles, dissenting members of the board of directors, who desire such changes, need not in any way functionally contribute to the manufacture of automobiles.

Analogously, if anarchists captured the policy setting bodies of the State, they could if they desired convert the State into a totally non-invasive organization. So long as the State remains a State and commits invasive acts, there must be some individuals within its policy setting jobs functionally responsible for those acts. It is possible, however, for other individuals in policy setting

***If anarchists
captured the policy-
setting bodies of the
State, they could convert
it into a non-invasive
organization.***

jobs to oppose the State's aggressive activities. These individuals need not make any functional contribution to the State's aggression. They are no more responsible for the State's aggressive product than dissenting members of the automobile company's board of directors are functionally responsible for their company's product.

What about accepting a State salary? Does accepting stolen tax money help to promote unlibertarian ideas? Perhaps, but again, we cannot finalize this judgment without some principle that distinguishes accepting a State salary from apparently innocuous uses of State resources, like driving on State roads, mailing letters at the State post office, or getting a tan on State beaches. The greater difficulty in avoiding these latter uses, moreover, cannot provide the distinction. We require some principle more substantial than relative inconvenience to condemn an act as ideologically inconsistent.

The one aspect of holding elected

office that is, without doubt, ideologically inconsistent, at least for anarchist libertarians, is taking the oath of office. Affirming or swearing allegiance to the State may not be invasive, but it certainly involves a theoretical transgression. If the anarchist candidate runs a consistently libertarian campaign, and while in office consistently opposes all State aggression, then taking the oath is a relatively trivial transgression. After all, the oath is an anachronistic ritual, dating from a time when people attached mystical or religious authority to such statements. I find it surprising that some voluntarists have greater superstitious reverence for this ceremonial gesture than do most people today, and indeed greater than does the State itself. Nonetheless, voluntarists are correct at least about the oath's ideological status. Elected libertarians, in order to remain consistent, must either refuse to take the oath, or must modify it so that it is consistent with libertarian ideas.

Running for Elected Office: Admittedly, our discussion of the ideological consistency of a libertarian holding office has abstracted from the question of how the libertarian got into office in the first place. The voluntarist might concede that if an anarchist magically found him or herself in political office, he or she could use the position to promote libertarian ideas and oppose the State's invasive actions. But would not the anarchist's attempt to gain elected office in the first place constitute an act theoretically contrary to libertarian ideas?

The answer to that question depends upon the type of election campaign the anarchist libertarian runs and the campaign's ultimate goal. If the ultimate goal is winning the election, with all other considerations secondary, then the voluntarist charge is correct. Such a campaign, in the current political context, cannot avoid theoretical inconsistency. On the other hand, if the anarchist libertarian runs a purely educational campaign, with the primary goal of spreading libertarian ideas, and with all other considerations, including electoral victory, secondary, then the voluntarist charge is false. Nothing in principle prevents an anarchist libertarian from conducting a totally consistent campaign.

Needless to say, an anarchist libertarian is unlikely to win, at least in the short-term, if he or she remains ideologically consistent by running an educational campaign. This observation merely indicates, however, that ideologically consistent campaigns are usually unwinnable, not that they are always impossible. Some political libertarians, like myself, are totally undaunted at the practical unwinnability of consistent campaigns. More important, if libertarians should actually win election after running purely educational campaigns, the very consistency of that campaign facilitates continued consistency in office.

Political Voting: Voluntarist claims about the ideological inconsistency of political voting stem from the alleged role of voting in legitimizing the State. Political voting is the major source of ideological legitimization, they argue, for the modern democratic State. This statement is true, as far as it goes, but it ignores an important distinction. The State enhances its legitimization by granting people the legal right to vote, but *granting* the right to vote and *exercising* that right, once it is already granted, are completely different. There is no solid evidence that individuals exercising the voting option, once the State has granted it, confers any further legitimization upon the State.

Let us look at the issue from the opposite angle. If the United States government, tomorrow, withdrew the legal right to vote, that step alone would almost completely delegitimize the U.S. government in the eyes of the American people. On the other hand, the fact that a large percentage of potential voters already fail to exercise the right to vote has had no noticeable impact on the State's popularity. Indeed, it could plausibly be argued that failure to vote is a sign of political complacency. Political dissatisfaction can just as easily increase, rather than decrease, the extent to which people exercise their voting option.

Even if the overwhelming majority of potential voters refused to vote, that, in and of itself, would neither signal an end to the State's legitimization nor halt the

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State's aggression. The number of people who actually vote, once the vote has been granted, is largely irrelevant. Exercising the vote does not contribute to the State's legitimization. It merely employs one of the options at our disposal for reducing the State's burden upon our lives.

Unlibertarian in the Third Sense: Strategically Unsound

Holding Elected Office: Voluntarists have one final argument against the elected libertarian office holder. Unable to show that the libertarian office holder is *necessarily* guilty of aggression or inconsistency, they question the libertarian office holder's trustworthiness. Citing Lord Action's famous dictum about how power corrupts, they argue that even if it is not logically necessary for an elected official to exercise the unjust powers of office, an elected libertarian will inevitably be tempted to do so. How can we rely solely upon the elected libertarian's good intentions, especially when he or she sought a position of power in the first place and probably swore on oath of allegiance to the State?

This would be an unanswerable strategic objection, if indeed all we could rely upon were the good intentions of elected libertarians. However, we do not have to rely upon intentions at all. The circumstances of any politician's election determine the parameters within which the politician must work while in office. Libertarians elected on the basis of ideologically inconsistent campaigns will, of course, face tremendous pressures to compromise libertarian principles, but they have already demonstrated their willingness to sell out in their campaigns. On the other hand, libertarians who run ideologically pure campaigns cannot even win unless the ideological preconditions already exist to make compromise very difficult. Self-interest and political realities, rather than good intentions, will tend to maintain the consistency in office of libertarians who run consistent campaigns.

Running for Elected Office: In order to consider the efficacy of running libertarians for office as a means of achieving an anarchist-libertarian society, we must make another distinc-

tion, this time between two strategic goals. Libertarians face the twin strategic tasks of (1) persuading a sufficient number of the right people that libertarian ideas are correct and (2) actually implementing libertarian policies, once the first task has been accomplished.

Electoral politics will inevitably be the primary means for accomplishing the second task, so long as the United States government remains democratic. The democratic process allows the state to adjust smoothly to changes in ideological consensus, and thus, paradoxically, helps keep the State legitimized. As libertarianism gains wider acceptance, the democratic process will automatically translate the ideas into policy, regardless of whether libertarians personally involve themselves in electoral politics. Alternative strategies, such as non-violent resistance or violent revolution, can become the *primary* means for implementing libertarian policies only if the United States government ceases to be democratic. Otherwise, these alternatives will not have an opportunity to operate, because the numbers they require for success are usually sufficient to alter the offending policies democratically. Non-violent resistance and other alternatives may

prove fruitful under a democratic State for the first strategic task of ideological persuasion. For the implementation of libertarian policies, however, electoral politics is unavoidable.

A more interesting and controversial question is the efficacy of electoral politics for the first strategic task: persuading a sufficient number of the right people. This is the task presumably undertaken by the Libertarian Party. Party advocates argue that the public is most acutely interested in political issues during elections. The Libertarian Party can exploit this interest and spread libertarian ideas by running candidates. Libertarian candidates give libertarian ideas a visibility they could not otherwise attain.

There are three counter-arguments to this strategic justification for running libertarian candidates: (1) Electoral politics aims libertarian ideas at the wrong people, those who have negligible effect upon general public opinion. People who are only interested in political issues during elections do not think independently about such issues anyway and are usually influenced by others who do think about political issues between elections. (2) If the

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Libertarian Party remains consistent, it will not elect anyone to office, at least in the near future. People will not take seriously an organization that pretends to be a political party, but never wins any election. Libertarian candidates are doomed to the neglect accorded all minor splinter candidates, and this will discredit libertarian ideas. (3) The Libertarian Party cannot remain consistent. The lure of political power is too strong. Candidates will tone down libertarian principles in order to gain votes.

In my opinion, these strategic objections, especially the first two, are the more serious arguments against libertarian political action. I am not convinced they can ultimately be disputed, and I await further evidence and discussion.

Political Voting: Even if running libertarian candidates is strategically unsound, this does not reflect on the efficacy of political voting. If political voting is not invasive, and it does not legitimize the State, then there remains no additional strategic objection to it. The only alternative is not voting. From a purely strategic viewpoint, voting for the least objectionable candidate, voting against an unjust referendum, or voting against a constitutive increase in State power has greater impact than not voting at all.

Let me conclude this section on whether electoral political action is unlibertarian in the third sense with some general strategic comments. I have already alluded to the paradox of democratic mechanisms. By adjusting State policies to popular opinion, they perpetuate the legitimization of the State. This confronts libertarians, especially anarchist libertarians, with an apparent strategic dilemma. Libertarians want to implement libertarian policies that reduce the power of the State, but they also want to delegitimize the State. Superficially, these two goals are incompatible. If libertarian ideas become more popular, and if democratic mechanisms implement them into policy, this thwarts the goal of delegitimizing the State. The State can be delegitimized only at the cost of sabotaging the democratic process and the implementation of libertarian policies. Some zealous libertarians, grasping this ostensible

dilemma, actually hope that the State becomes more oppressive in order to make it less popular.

This strategic dilemma, however, rests on an ambiguity in the concept of

From a purely strategic viewpoint, voting for the least objectionable candidate has greater impact than not voting at all.

delegitimization. Remember the distinction between Category I (invasive) and Category II (non-invasive) activities. Delegitimization does not require implacable and indiscriminating condemnation of all features of the particular organizations that are now States, no matter what they do or how they change. Instead, delegitimization merely entails the recognition that the State has no more right to engage in Category I activities than do private individuals and organizations. The implementation of libertarian policies entails the elimination of those very same Category I activities. Thus, the delegitimization of the State and the implementation of libertarian policies are complimentary aspects of the same process.

If the democratic State ever ceases to exist, without becoming a non-democratic State first, it will do so either through its own disbandment or through its transformation into a non-invasive institution. I wish to emphasize this point, because many voluntarists seem to assume, implicitly, that neither outcome is possible. They mistakenly leap from the insight that the State is *inherently* invasive to the conclusion that the particular organizations that are now States are *purely* and *inalterably* invasive. This implicit assumption, more than any other belief, informs the voluntarist opposition to political action. If the State can never limit or eliminate its invasive activities, then electoral political action becomes, by assumption, futile. This assumption, however, ignores the very real impact that changes in society's ideological consen-

sus can have upon the extent and significance of the invasive activities of both democratic and non-democratic States. The description "inherently invasive" applies to the category "State," and not to particular organizations, which can in theory move in and out of that category.

This completes my review of the nine possible voluntarist claims. Upon critical examination, only one of the nine—the claim that running for elected office is unlibertarian in the third sense (strategically unsound)—comprises, thus far, a serious challenge to the compatibility of libertarianism and electoral politics. The claims that electoral politics is invasive (unlibertarian in the first sense) hinge upon the derivation and definition of a libertarian concept of vicarious liability—an endeavor that has hardly started. The claims that electoral politics is ideologically inconsistent (unlibertarian in the second sense) end up resting upon nothing more than the theoretical content of the oath of office—a trivial and easily surmountable obstacle. Even the potential validity of the claims that electoral politics is strategically unsound (unlibertarian in the third sense) is confined to questioning the ideological efficacy of running libertarian candidates. The voluntarist rejection of libertarian political action needs considerably more support, to be persuasive. □

Footnotes

¹ George H. Smith, "The Ethics of Voting," Part 1, *The Voluntarist*, (Oct. 1982), 3-5.

² Jeffrey Rogers Hummel, "Is Detente Between Anarchist and Limited Government Libertarians Possible?," speech first delivered at the Politics of Principle Conference (Austin, 1981) and subsequently elsewhere. This speech will appear soon, I hope, as an article. Note that anarchist libertarians believe that the State, by its nature, must engage in Category I activities. They therefore oppose State provision of all Category II services. Limited government libertarians, in contrast, do not believe that Category I acts are inherent in the nature of the State. They therefore do

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not oppose State provision of all Category II services. They make special exceptions for services like just defense and retaliation.

³ Smith, "The Ethics of Voting," Part 1, 1,3.

⁴ Smith, "The Ethics of Voting," Part 1; Part 2, *The Voluntaryist*, 1 (Dec. 1982), 3-6; Part 3, *The Voluntaryist*, 1 (Apr. 1983), and continued in forthcoming issues.

⁵ Murray N. Rothbard, "Law, Property Rights, and Air Pollution," *The Cato Journal*, 2 (Spring 1982), 55-99. Rothbard claims to oppose vicarious liability altogether, but it is clear from his remarks that he is using a much narrower definition of the term than Smith or I. Some of the instances which we would include under vicarious liability—for example, the liability of an employer for the employee torts that he expressly orders—Rothbard finds valid.

⁶ Jeffrey Rogers Hummel, "Can

Elected Officials Be Consistent Libertarians?" *Free Texas*, 10 (Fall 1981), 16-7. This article was subsequently condensed and reprinted under the misleading title, "Should a Libertarian Let Himself Get Elected?," in *Frontlines*, 4 (Feb. 1982), 5-6. In this article, I used the general term "accomplice" instead of "vicarious liability." Since then, George Smith and others have convinced me that "vicarious liability" is the better choice.

⁷ The possession of unjust power theory is most forcefully presented in George H. Smith, "Party Dialogue," *New Libertarian*, 4 (Dec. 1980/Feb. 1981), 6-11; reprinted as a pamphlet in the *Voluntaryist Series*, n. 1 (Baltimore, 1982). Although Smith initially appears to use this theory to claim that holding office is unlibertarian in the first sense (invasive), his reply to a critical letter by Less Antman, in *New Libertarian*, 4, (Apr./June 1981), 5-6, makes it unclear whether he is claiming that holding

power is unlibertarian in the first or second sense. See also Smith, "The Ethics of Voting," Part 3.

⁸ This theory is presented in Smith, "The Ethics of Voting," Part 2, 3-6.

⁹ Samuel Edward Konkin III, "Invaders from the State," *Libertarian Review*, 5 (Mar./Apr. 1976), 10-11. See also his pamphlet, *Our Enemy, The Party*, (Long Beach, n.d.). Konkin has amplified and clarified his position further in conversations with me.

¹⁰ For a defense of libertarians accepting a State salary, a defense that I find provocative but not entirely convincing, see Less Antman, "Should Elected Libertarians Accept Salaries?," *Caliber*, 9 (June/July 1981), 6-7, 11.

¹¹ Murray N. Rothbard and Scott M. Olmsted, "Is Voting Unlibertarian?," *Libertarian Vanguard*, n. 25 (Apr. 1983), 4-5.

¹² Smith, "The Ethics of Voting," Part 2, 4-5; Part 3.

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